

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

OMAR HUMPHREY

PLAINTIFF

v.

No. 4:10cv81-MPM-DAS

MISSISSIPPI DEPARTMENT OF CORRECTIONS

DEFENDANT

ORDER

Before the court is the plaintiff's motion for an order requiring the Mississippi Department of Corrections and the Bolivar Medical Center to produce a copy of his medical records for preparation of his case for the *Spears* hearing set in this matter. Specifically, the plaintiff states that he has not received the results of an MRI performed on his right knee and that those results are "vital" to his claim. A *Spears* hearing is an evidentiary hearing in the nature of a FED. R. CIV. P. 12(e) motion for a more definite statement. *See Neitzke v. Williams*, 490 U.S. 319, 326 (1989). As such, the hearing is not a trial on the merits but, rather, a method used to flesh out the allegations of the complaint. *See Spears v. McCotter*, 766 F.2d 179, 180 (5th Cir. 1985). An *in forma pauperis* complaint, like the one in this case, may be dismissed if it is determined that the allegation of poverty is untrue, or if the action or appeal is frivolous, malicious, fails to state a claim for which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). Accordingly, the court finds the plaintiff's request for discovery is premature. Therefore, the instant motion is hereby DENIED.

SO ORDERED this 9th day of September, 2010.

/s/ David A. Sanders
UNITED STATES MAGISTRATE JUDGE